

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NORTH CAROLINA  
CHARLOTTE DIVISION**

FS MEDICAL SUPPLIES, LLC,

Plaintiff,

v.

TANNERGAP, INC. *et al.*,

Defendants.

Civil Action No.  
3:21-CV-501-RJC-WCM

**PLAINTIFF'S MOTION FOR PROTECTIVE  
ORDER CONCERNING DEPOSITIONS – EXPEDITED  
RELIEF REQUESTED**

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October 23, 2024

Plaintiff, FS Medical Supplies, LLC (“FSMS”), respectfully moves for a protective order forbidding deposition questions related to the nine specific topics identified below because those topics are not relevant to any claim or defense in the case and are not proportional to the needs of the case. The affected depositions are those of Laird Cagan, FSMS (as a Rule 30(b)(6) witness), and non-parties Charles Roach, Will Hooks, and Reese Kennedy.

On October 15, 2024, without consulting FSMS’s counsel about availability, Tanner noticed the deposition of Charles Roach for October 24, 2024; nine days after the notice. Due to a scheduling conflict, Tanner agreed to postpone the deposition to November 6, 2024. During conferral among counsel, Tanner refused to postpone the depositions of Roach, Hooks, and Kennedy until the Court rules on this motion. **Accordingly, FSMS respectfully requests expedited resolution of this motion, and an intermediate order postponing the depositions of FSMS, Roach, Hooks, and Kennedy until after the Court rules on the merits of this motion. Such postponement is in the interest of judicial efficiency and will avoid the disputes that will inevitably arise should Tanner attempt to take these depositions before the motion is resolved.**

This motion is necessary because Tanner is attempting to use the deposition process to develop evidence on its unpled misrepresentation theory and to inquire about irrelevant and intrusive financial matters of no relevance to the claims and defenses in the case. A party is not entitled to use discovery “to develop new claims or defenses that are not already identified in the pleadings.” 2000 Advisory Com-

mittee Notes to Rule 26(b)(1). Tanner has moved for leave to add a misrepresentation defense and counterclaim, seeking to make a number of allegations “on information and belief.” *See* ECF 179-1 at 59-62. Tanner’s proposed “information and belief” allegations are that FSMS made misrepresentations on its website and in a brochure about its vetting of factories unrelated to Orient Gene, about its use of brokers, that it was supplying Target stores, and about its experience, resources, and capabilities. Tanner is attempting to fill in the gaps in these proposed “information and belief” allegations by seeking deposition testimony about FSMS’s website, brochures, vetting of factories, use of brokers, efforts to supply Target stores, and its financial resources. But a party may not use discovery to “troll for new claims or causes of action.” *Linseth v. Sustayta*, No. 1:21-CV-173, 2022 WL 16744347, at \*3 (D.N.D. Nov. 7, 2022) (cleaned up). Rather, “a party is to be held to discovery within the scope of the claims and defenses asserted in the pleadings.” *S. Pointe Wholesale, Inc. v. Vilardi*, No. 1:17CV-00052-GNS, 2018 WL 2085275, at \*3 (W.D. Ky. Feb. 2, 2018). Further, Tanner is using the deposition process to demand information about private financial matters that are irrelevant to any claim or defense; courts prohibit subjecting a party “to overbroad intrusion into its finances generally” where such information is irrelevant. *Caraustar Indus., Inc. v. N. Georgia Converting, Inc.*, No. 3:04CV187-H, 2005 WL 8174172, at \*4 (W.D.N.C. Sept. 9, 2005).

Pursuant to Local Rule 7.1, counsel for FSMS certifies that they conferred in good faith with counsel for Tanner to resolve areas of disagreement before filing this motion.

FSMS respectfully requests the Court to preclude deposition questions into

the following nine topics:

- (1) FSMS's website, the development of the website, the website developer (Charles Roach), the sources of statements on the website;
- (2) FSMS's brochures, price lists, and other marketing materials, the development of those materials, and the sources of statements in the those materials;
- (3) FSMS's sales personnel or potential sales channels, unless they communicated with Tanner;
- (4) FSMS's sources of PPE other than covid test kits, its relationships with manufacturers of PPE other than covid test kits, or its use of middlemen, intermediaries or brokers;
- (5) FSMS's efforts to supply disinfecting wipes to Target stores;
- (6) The truth or falsity of FSMS's alleged representations to Tanner regarding its relationships, experience, licenses, patents, resources, and capabilities;
- (7) FSMS's transactions with persons or entities unless they concern Orient Gene products or potential or actual sales to Tanner;
- (8) FSMS's funding, finances, sales, financial resources, accounting, bank accounts, assets, capitalization source of funds; and
- (9) FSMS's document storage systems.

**Further, FSMS respectfully requests expedited resolution of this motion and an intermediate order postponing the depositions of FSMS, Roach, Hooks, and Kennedy until the Court enters an Order on the substance of this motion.**

This the 23rd day of October, 2024.

/s/ Kent A. Yalowitz

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